

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

OMP (M) No.109 of 2001.
Date of decision: 13.09.2007

Janki Ram ...Petitioner-Objector

Versus

State of H.P. & Others ...Respondents-Non-objectors

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Objectors: Mr.J.S. Bhogal, Senior Advocate
with Mr.Suneet Goel, Advocate.

For the Respondents: Mr.Rajan Dewan, Additional
Advocate General.

Dev Darshan Sud, J.

The claimant-applicant has preferred this petition under Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), against the award made by the Arbitrator-cum-Superintending Engineer dismissing the claim submitted by the claimant.

It is alleged that the Arbitrator had initially made an award on 30.11.1999 and since he did not decide the claims preferred by the petitioner, an application was made for making an additional award which was disposed of on 14.5.2001.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

Mainly, point urged before me is that the award is not in consonance with the provisions of Section 31 of the Act. These provisions may be noticed at this juncture. Section 31 provides:

"31. Form and contents of arbitral award. -

- (1) *An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*
- (2) *For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signatures is stated.*
- (3) *The arbitral award shall state the reasons upon which it is based, unless-*
 - (a) *the parties have agreed that no reasons are to be given, or*
 - (b) *the award is an arbitral award on agreed terms under section 30."*

It is not disputed before me that the provisions of Section 31(3)(b) are not applicable as no resort to the provisions of Section 30 of the Act has been made. It is also not disputed before me that clause-(a) of sub-section (3) is not applicable as

there is no agreement interse between the parties that no reasons are required to be given.

The provisions of Section 31(3) are mandatory. Once there is an absence of an agreement between the parties that reasons are to be dispensed with, it is the primary duty of the Arbitrator to give reasons for the award. This is the plain and simple meaning which is to be ascribed to this provision. The reading of the award as also supplementary award, which has been passed, shows that no reasons have been given. It needs no reiteration that reasons for the decision are fundamental in any adjudicatory process. They provide an insight into the process of decision making. Simply observing that a particular party has been heard and that there is no merit in the submissions made, is no reason for the award but stating a prejudged opinion. The statutory mandate of Section 31(3) is recognition of the well established principle now entrenched in law that reasons are the heart and soul of any decision. Merely stating conclusions, refraining from making a speaking order, indicate non-application of mind by the decision making authority. Learned counsel appearing for the applicant cited a number of decisions which are not being considered as a plain reading of the provision discloses the statutory mandate. He has drawn the attention of this Court to the decision of the Calcutta High Court in **Soorajmull**

Nagarmull vs. M/s.Jute Corporation of India Ltd., A.I.R. 2001 Calcutta 227, holding that merely stating arguments or submissions in award does not make it a speaking award. He submits that the Hon'ble Supreme Court in **M/s.Centrotrade Minerals & Metal Inc vs. Hindustan Copper Ltd., 2006(2) R.A.J. 531(SC)** has held:

"45. In the 1940 Act, no reason was required to be stated in the award unless otherwise agreed upon. In the 1996 Act, reasons are required to be stated unless agreed to otherwise by the parties. The court's intervention is sought to be minimized under the provisions of the 1996 Act not only having regard to the concerns expressed in the international community as regard delay in the arbitration proceedings but also in view of the fact that an award under the 1996 is to be a reasoned one. In a large number of judgments, this Court has emphasized that the extent of power of the court's intervention in relation to a reasoned award and unreasoned one would be different. Whereas in relation to an unreasoned award, the court's jurisdiction to interfere with the award was absolutely limited, a greater latitude had been given in relation to a reasoned award".

In **Smt.Saroj Bala vs. Rajive Stock Brokers Ltd. & Anr., 2005(1) R.A.J. 637(Del)**, it has been held:

"6. The obligation to record reasons has a salutary purpose to serve. The parties to a lis whether before a court or a domestic forum chosen by the parties like the arbitrator, are entitled to know the reasons that led to the success or the failure of a claim brought before it. The need for disclosure of reasons in support of the conclusions is essential also because it is the disclosure of reasons alone that can effectively demonstrate that the arbitrator or the court before whom the matter was brought had applied its mind. Application of mind by the authority deciding an issue in controversy is a sine qua non for a proper exercise of the jurisdiction vested in any authority determining the rights and obligations of the parties. The duty to act judicially arises from the nature of the jurisdiction exercised by the authority. Implicit in the duty to act judicially is the obligation to pass an order only after due and proper application of mind. Application of mind in turn can be demonstrated by the disclosure of the mind which is best done by recording reasons for the conclusion drawn by the authority. That apart, an award made by an arbitral tribunal is open to challenge before the court under

Section 34 of the Act. The decision of the Supreme Court in Oil and Natural Gas Commission (supra) has dealt with an elucidated the scope and parameters of the jurisdiction of the court to examine the validity of the arbitral awards. Disclosure of reasons except in cases where parties agree that the same need not be recorded would, therefore, provide a vital key to the court exercising jurisdiction under Section 34 of the Act to examine whether the award suffers from any illegality to call for modification or setting aside of the same. The necessity of recording reasons cannot, thus, be undermined, having regard especially to the fact that arbitration as an alternative dispute resolution mechanism is catching up and cases involving stakes and issues of far reaching importance in the commercial world are being referred for adjudication by arbitration".

Precedent need not be multiplied any further. The duty to record reasons is now mandatory.

The award is in violation of the mandatory provisions of the Act itself and cannot be upheld. In the facts and circumstances of the case, this petition is allowed. The matter is remanded to the Arbitrator who will determine the matter afresh in accordance with law, keeping in view the mandate of Section 31(3) of the Act. He will proceed with expedition in the

matter. Needless to say that the parties will be given notice of every proceeding and such particular as they may desire to establish their case. There shall be no order as to costs.

September 13, 2007.
(aks)

(Dev Darshan Sud)
Judge.